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Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170086-U

NOS. 4-17-0086, 4-17-0087 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v. (No. 4-17-0086)	)	No. 14JA161
DERRICK TURNER,	)	
Respondent-Appellant.	)	
	)	
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In re: D.S., a Minor,	)	No. 14JA162
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0087)	)	
DERRICK TURNER,	)	
Respondent-Appellant.	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Respondent has forfeited any challenge to the trial court's finding that he is an "unfit person" within the meaning of sections 1(D)(m)(i) and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2014)), because he makes no reasoned argument regarding those sections.

(2) In finding it would be in the children's best interest to terminate respondent's parental rights, the trial court did not make a finding that was against the manifest weight of the evidence.

¶ 2 In these two consolidated cases, respondent, Derrick Turner, appeals from the termination of his parental rights to D.S., born September 25, 2012, and D.H., born October 9, 2014. He challenges both the finding that he is an "unfit person" and the finding that terminating

his parental rights would be in the children's best interest. We hold that respondent has forfeited any challenge to the finding that he is an "unfit person" within the meaning of sections 1(D)(m)(i) and (ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2014)), because the argument portion of his brief lacks a discussion of those sections. We further hold that, in finding it would be in the children's best interest to terminate respondent's parental rights, the trial court did not make a finding that was against the manifest weight of the evidence. Therefore, we affirm the trial court's judgment in the two cases.

¶ 3 I. BACKGROUND

¶ 4 On November 21, 2014, the trial court decided there was an immediate and urgent necessity to put the children in shelter care, because their mother had failed to follow through with mental-health treatment.

¶ 5 On June 16, 2016, the State filed motions for the termination of parental rights in the two cases. In both motions, the State alleged that respondent met three of the statutory definitions of an "unfit person" in that he had failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (see 750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts (see 750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) make reasonable progress from August 12, 2015, to May 12, 2016 (see 750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 6 The trial court held a fitness hearing on September 29, November 9, and December 9, 2016. The evidence presented was as follows.

¶ 7 Glen Sheets, a caseworker at the Illinois Department of Children and Family Services (DCFS), referred respondent to a clinical psychologist, Lori McKenzie, for a

psychological evaluation because he showed signs of possible "cognitive delay." To quote from McKenzie's report, dated November 4, 2015:

> "For example, paternity had to be completed due to [respondent's] believing he wasn't the father due to hi[s] not being in town when [the child] was born. There is also concern with his ability to retain information. This worker had explained why he had to do services on Monday[,] and by Wednesday he couldn't repeat what this worker had said. There is concern that he can only parent for a short time due to never parenting any child full[-]time. [Respondent] is unable to articulate his address or his mother's first name."

¶ 8 Through formal intelligence-quotient testing, McKenzie determined that respondent was "in the Mildly Impaired range." Because "his adaptive functioning," however, was "well above that level"—an age equivalent of 14 years, 6 months—he did "not meet the criteria for [an] Intellectual Disability diagnosis." In her testimony, McKenzie was unwilling to opine that respondent was "capable of parenting independently." Because "he didn't appear to have significant experience with parenting independently," she thought that before the children were placed in his sole care, he should complete the evaluation and classes recommended by his service plan and then demonstrate an ability to apply what he had learned. To quote again from her report:

> "There is very little information available in records to indicate that [respondent] could not appropriately parent his children, although he does not appear to have significant experience with parenting independently. Once he has successfully completed the various evaluations and classes that are in his service plan, as well as any additional services that are recommended, and is able to demonstrate that

he is able to use the information learned in parenting, there should be nothing preventing him from providing minimally appropriate parenting."

¶ 9 Another caseworker at DCFS, Michelle Termain, testified about what the service plans required and how respondent did in fulfilling those requirements. He was to cooperate with DCFS, take parenting classes, attend visitation with the children, receive domestic-violence counseling, and undergo substance-abuse assessment and treatment ("due to past legal involvement with *** drug paraphernalia and also past admittance of marijuana use"). He never did complete the domestic-violence assessment. Because he became angry and argumentative, he was escorted out of the first assessment meeting, and he failed to attend the rescheduled assessment meeting. He did not "cooperate in random toxicology screens" either. He completed only the initial portion of the parenting course and failed the test on the portion he completed, being unable to remember what had been covered. It was not until June 2016, when the motions for termination of parental rights were filed, that he began taking parenting classes again, but he still had not completed the parenting course. He attended only 11 of 23 scheduled visitations. From November 2015 to February 2016, he attended no visitations at all. After missing visitations for several months, he explained that visitation conflicted with his work schedule. He was asked to provide proof of employment and a work schedule so that accommodations in the visitation schedule could be made. He never did so. Generally, the visitations he did attend did not go well. During visitations, he complained about the case and cursed the caseworker in front of the children. The caseworker had to stand outside the room and watch the visitation through a window in the hope that he would pay attention to the children (instead of quarreling with her), but even then he seemed distracted. His interaction with the children was poor. He did not seem

to understand age-appropriate play or discipline. He did not make eye contact with the children or interact with them.

¶ 10 Respondent called his employer, Lorenzo Louden, as a witness. Louden testified that when visitation was changed from Thursdays to Mondays from noon to 1 p.m., he asked to speak with the caseworker. He explained to her that respondent came into work at 6:30 a.m. and worked until 4 or 5 p.m. The worst day of the week for respondent to be absent from work was Monday. Louden told the caseworker it would be best for him, Louden, to give her respondent's work schedule because respondent would not be able to give it to her. He had to be shown how to do things, not told. If visits were scheduled after 5 p.m., it would not interfere with respondent's work schedule.

¶ 11 Over the State's relevancy objection, the trial court admitted a copy of an e-mail from Amanda Wills. She wrote that she was married to respondent from 1999 to 2004 and that two daughters were born to them. While Wills went to school and worked full-time, respondent took care of both of their daughters, from their birth until 2003, when he and Wills separated. According to Wills, "[h]e took very good care of them[,] and there was [*sic*] never any issues or call to DCFS." Wills concluded: "I completely trust that he is very well capable of caring for the two boys that he has in the system now[,] just like he cared for his two daughters."

¶ 12 At the conclusion of the fitness hearing, the trial court found that the State had proved, by clear and convincing evidence, all three of its allegations of unfitness as to respondent. See 750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2014). The court also found the mother to be an "unfit person."

¶ 13 On January 26, 2017, respondent signed a typewritten letter, in which he stated as follows:

> "I *** would like to do a direct sign[-]over of my parental rights for my children [D.H. and D.S.] to their maternal aunt Johntaya Meyers[,] as I feel this would be in the best interest of my children to be raised with a family member and also raised together in the same home as brothers. Johntaya Meyers is the sister to the mother of my children[.] [S]he is 21 years old and works full[-]time at The Hope Institute for Children and Families, as a Habilitation Specialist. Johntaya is more than willing to [to] adopt both boys."

¶ 14 That same day, January 26, 2017, the trial court held a best-interest hearing. Termain testified that when the two cases were opened, no foster home was available that could take both of the children. Therefore, DCFS did the next best thing, by placing the children in foster homes located in the same community, within a mile of each other. The foster parents made sure the children visited with one another at least every week. Both children had been in the same foster homes since November 2014.

¶ 15 Initially, when D.S. came into care, he "had very little speech." Recently, he was diagnosed with pervasive developmental disorder. He was "making progress," however, in his foster home. He was undergoing speech therapy through the school district, and he now had a larger vocabulary. He was current on all his well-child appointments. He lived in a six-bedroom house with the foster parents, three biological sons, and two adopted girls from China. There was an obvious sibling bond, as well as an obvious bond with the foster parents, whom he called "Mom" and "Dad." They wanted to adopt him and had signed a permanency agreement saying so. He needed much reassurance before visiting respondent and his mother; he needed to be reassured that after a short visit, he would be returned to the foster home and that the foster parents would be there waiting for him.

¶ 16 The younger boy, D.H., who lived in a four-bedroom house with the foster parents, two biological sons, a biological daughter, and a foster daughter, was diagnosed with autism in January 2017. The foster parents and DCFS were in the process of getting him into various therapies, including behavioral therapy and occupational therapy. He was current on his well-child appointments. He played a lot with the two girls, who were four and five. He was minimally verbal and tended to stay close to the foster parents. They wanted to adopt him and had signed a permanency agreement saying so.

¶ 17 The trial court found that the termination of parental rights would be in the best interest of D.H. and D.S. The court reasoned as follows:

> "Is there some bond or attachment with the parents? Perhaps there is, just through the contact of the time that they were at home, particularly for [D.S.], as opposed to [D.H.], since I believe he was only six weeks old when he came into care. You know, have they established some form of bond during the visitation? Perhaps. But that's not the end-all be-all. It's whether or not they have some attachment or bond to their parent. I have to balance that with where are they most likely going to obtain permanence, given the length of time that this case has been in the system. Also consider the special needs of these children, they they [sic] need structure. They need security. The length of time that they've been in their current placement. I do believe it is in their best interest to remain essentially where they are to obtain that permanence. I do not [*sic*] find that the likelihood of obtaining permanence to try and do that with the parents is going to take too long. We've given quite a period of time at this point, and I don't see it changing at this point.

So I do find it is in the best interest of the minors that the parental rights of both the mother and the father and unknown fathers be terminated, having considered all those factors."

¶ 18 II. ANALYSIS

¶ 19 A. The Finding That Respondent Was an "Unfit Person"

¶ 20 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proved, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proved, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. 705 ILCS 405/2-29(2) (West 2014); see also *In re D.T.*, 212 Ill. 2d 347, 366 (2004); *In re M.M.*, 226 Ill. App. 3d 202, 209 (1992).

¶ 21 Respondent did not execute a voluntary surrender of his parental rights and a consent to adoption. He did not actually surrender his parental rights in the letter of January 26, 2017; nor did he consent to the adoption of his children by anyone other than Meyers. Therefore, the first prerequisite to the termination of his parental rights was a finding, by clear and convincing evidence, that he was an "unfit person" within the meaning of any subsection of section 1(D) the State invoked in its petition (750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2014)). See 705 ILCS 405/2-29(2) (West 2014); *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20.

¶ 22 We defer to the trial court's findings to the extent they are not against the manifest weight of the evidence. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004). A

finding is against the manifest weight of the evidence only if it is "*clearly evident*" that the finding is unsupported by evidence in the record. (Emphasis added.) *Id*. In other words, to overturn a finding by the trial court, we would have to conclude that the finding is "unreasonable, arbitrary, and not based on the evidence." *Id.*

¶ 23 In his brief, respondent argues that, in finding him to be an "unfit person," the trial court made a finding that was against the manifest weight of the evidence. The only statutory definition of an "unfit person" that respondent discusses, however, is the definition in section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)), which provides that an "unfit person" includes a parent who "[f]ail[s] to maintain a reasonable degree of interest, concern[,] or responsibility as to the child's welfare." In the argument portion of his brief, respondent does not discuss, or even mention, the other two statutory definitions the court found to be proved, namely, "[f]ail[ure] *** to make reasonable efforts to correct the conditions that were the basis for the removal of the child[ren] from the parent during any 9-month period following the adjudication of neglected or abused minor" (750 ILCS 50/1(D)(m)(i) (West 2014)); and "[f]ail[ure] *** to make reasonable progress toward the return of the child to the parent during" the period of August 12, 2015, to May 12, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)). An argument on those sections should begin with the text of those sections, interact with any relevant judicial interpretations of those sections, and explain how the State had fallen short in its proof of those sections, so interpreted.

¶ 24 Because the argument portion of respondent's brief lacks any reasoned argument regarding sections 1(D)(m)(i) and (ii) of the Adoption Act, we hold he has forfeited any challenge to the trial court's findings that the State proved those two sections. "Points not argued are waived"—or, to use the technically correct term, "forfeited" (*Ameren Illinois Co. v. Illinois*

Commerce Comm'n, 2012 IL App (4th) 100962, ¶ 109)—"and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)). See also *Zdeb v. Allstate Insurance Co.*, 404 Ill. App. 3d 113, 121-22 (2010). Given the forfeiture as to sections 1(D)(m)(i) and (ii), it is academic whether the finding as to section 1(D)(b) is against the manifest weight of the evidence (see *In re D.L.*, 326 Ill. App. 3d 262, 268 (2001)), and we should refrain from deciding academic questions (*Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001)). Meeting any *one* of the definitions in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) is enough to make the parent an "unfit person." See *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). In the absence of any discussion of sections 1(D)(m)(i) and (ii), it is effectively undisputed that respondent meets the definitions in those sections.

¶ 25 B. The Best Interest of the Children

¶ 26 Under the heading of the children's best interest, respondent blames DCFS for failing to schedule visitations that would accommodate his work schedule. He argues that "if permanence and the quality of the parent-child relationship is [*sic*] truly a key component to be scrutinized in the 'best interests' portion of the termination process, it cannot be said that the [a]gency in this case accommodated [his] willingness to see his children." In his view, his "inability to bond with the children on a regular basis during visits cannot be held against him," and "it is not in the best interests of his children that his rights be terminated," considering that it "was the responsibility of the [a]gency" to "accommodate [his] legitimate impediment to visits." Citing *In re K.B.*, 314 Ill. App. 3d 739, 753 (2000), he insists that his "actions in this matter must be evaluated in the context of the circumstances in which they occurred."

¶ 27 When we said, however, in *K.B.*, that "we evaluate [the parent's] conduct in the context of the circumstances in which the conduct occurred," we were addressing the issue of fitness, specifically, whether the parent had shown "reasonable interest, concern, or responsibility toward the child's welfare." *Id.* We were not addressing the issue of the child's best interest. For purposes of fitness under section 1(D)(b) of the Adoption Act, a parent could legitimately argue that his or her "failure to visit was motivated by a need to cope with other aspects of [his or] her life"—such as the need to make a living—rather than "by true indifference to the child." *Id.* But we are unclear how that argument would logically apply to the different issue of the child's best interest.

¶ 28 To be sure, "the child's sense of attachments" (705 ILCS 405/1-3(4.05)(d) (West 2014)) and "the child's need for permanence" and "continuity with relationships with parent figures" (705 ILCS 405/1-3(4.05)(g) (West 2014)) are factors a trial court should consider whenever a best-interest determination is required. But *why* a child feels more love and security with the foster parent than with the parent and *why* a child experiences greater stability with the foster parent than with the parent goes more to the question of whether, or how much, the parent is at fault than to the question of the child's best interest. The germane question is "where the child *actually* feels love, attachment, and a sense of being valued," not where the child *would have* felt these things but for circumstances that unfairly put the parent at a disadvantage in his or her relationship with the child. (Emphasis added.) 705 ILCS 405/1-3(4.05)(d)(i) (West 2014). Once the fitness hearing ends and the best-interest hearing begins, the focus shifts from the parent to the child. *D.T.*, 212 Ill. 2d at 364. "Following a finding of unfitness, *** the focus shifts to the child. *** [A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.*

¶ 29 By all indications, D.H. and D.S. have a stable, loving home life in their foster homes, and "the child's sense of attachments" (705 ILCS 405/1-3(4.05)(d) (West 2014)) and "need for stability" (705 ILCS 405/1-3(4.05)(g) (West 2014)) are important factors for a trial court to consider when making a best-interest determination. Section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2014)) provides:

> "(4.05) Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:
>
> (a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;
>
> (v) the least disruptive placement alternative for the child;
>
> (e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child."

¶ 30 D.H. and D.S. are emotionally attached to their foster parents and foster siblings, and, in fact, before he was taken to visitations, D.S. had to be assured he would be returned to his foster parents as soon as visitation was over. See 705 ILCS 405/1-3(4.05)(d) (West 2014). Of the two children, the one who had the ability to speak, D.S., made clear whom he wanted to live with. See 705 ILCS 405/1-3(4.05)(e) (West 2014). It does not appear that respondent had much of a rapport with the children during visitations, but the children had a rapport with their foster parent—the mutual affection was clearly evident to the caseworker during home visits. See 705 ILCS 405/1-3(4.05)(d)(i) (West 2014). D.S. who was four years old at the time of the best-interest hearing, had been in the same foster home since he was two years old, and D.H., who was two years old, had been in the same foster home since he was one month old. See 705 ILCS 405/1-3(4.05)(g) (West 2014). Not only do the foster parents meet the children's physical and medical needs (See 705 ILCS 405/1-3(4.05)(a) (West 2014)), but they meet the children's special developmental needs (See 705 ILCS 405/1-3(4.05)(h) (West 2014)). The foster parents want to adopt D.H. and D.S. See 705 ILCS 405/1-3(4.05)(d)(ii), (g), (j) (West 2014). In short, the foster parents are known, proven quantities, whereas respondent was a less known quantity.

Considering that the foster parents had provided good, loving care to the children for years and that they were committed to continuing to do so as adoptive parents, the trial court could have reasonably decided it would be unwise to disturb a good thing and that it would be in the children's best interest to remain in the foster homes, where they were, by all appearances, happy and well cared for. We are unable to say this best-interest determination is against the manifest weight of the evidence, or that the facts clearly call for the opposite determination. See *In re Dal. D.*, 2017 IL App (4th) 160893 ¶ 53.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the trial court's judgment in these two consolidated cases.

¶ 33 Affirmed.